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International Covenant on Civil and Political Rights

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Human Rights Committee

Decision adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2088/2011*,**

Communication submitted by:	B.H. (not represented by counsel)
Alleged victim:	The author
State party:	Austria
Date of communication:	14 February 2005 (initial submission)
Document references:	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 19 August 2011 (not issued in a document form)
Date of adoption of decision:	28 March 2017
Subject matter:	Right to a public hearing by a competent, independent and impartial tribunal established by law
Procedural issues:	Exhaustion of domestic remedies; right to submit a communication
Substantive issues:	Right of access to an independent and impartial tribunal, to a public oral hearing and to a fair trial
Article of the Covenant:	14
Articles of the Optional Protocol:	3 and 5 (2) (a) and (b)

1.1 The author of the communication is B.H., a national of Austria born in 1951. He claims that Austria has violated his rights under article 14 of the Covenant because the Administrative Court of Austria did not guarantee him the right to a fair trial when contesting the decision of the Austrian Public Employment Service to temporarily withdraw his unemployment benefit, following his alleged refusal of a job offer. The author is not represented by counsel. The Optional Protocol entered into force for the State party on 10 March 1988; upon ratification, the State party made a reservation to article 5 (2) (a).

* Adopted by the Committee at its 119th session (6-29 March 2017).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Sarah Cleveland, Ahmed Amin Fathalla, Olivier de Frouville, Christof Heyns, Yuji Iwasawa, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, José Manuel Santos Pais, Anja Seibert-Fohr, Yuval Shany and Margo Waterval.

1.2 The author submitted his initial communication on 14 February 2005 in German, which meant it could not be registered. The author resubmitted his complaint to the Committee in English on 4 July 2011, and it was registered on 18 August 2011.

The facts as submitted by the author

2.1 In 1996, the author was receiving unemployment benefit of 400 Austrian schillings ($41) a day from the Public Employment Service. According to a collective agreement,[1] that benefit was conditional on his accepting any offer of a suitable and paid job. The author asked the Chamber of Labour what salary he could expect from potential employers: in a letter dated 12 August 1996, the Chamber replied that he could expect to earn 24,580 Austrian schillings ($2,553) a month.

2.2 On 2 September 1996, the author received a letter from the Public Employment Service advising him that the Stelzer company had a job opportunity for which he had to apply. On 6 September, he was interviewed by his potential employer, J.S. During this interview, he was allegedly asked for his previous earnings, and he answered that he had received 40,000 Austrian schillings ($4,154) a month. On 12 September, the author was informed by telephone that he had not been selected for the position, but did not receive any further explanation.

2.3 On 16 September 1996, the company informed the Public Employment Service that it had rejected the author's application because his expectations as regards salary were excessive, adding that he had requested a salary of 40,000 Austrian schillings.

2.4 On the same day, an employee of the Public Employment Service, reiterated that a monthly salary of 40,000 Austrian schillings had been presented by the author as a condition for him to accept a job offer.

2.5 On 20 September 1996, the author indicated to the Public Employment Service that the amount he had talked about during his interview with J.S. concerned his previous earnings, which he had never presented as a condition for accepting employment.

2.6 On 1 October 1996, the author was advised by the Public Employment Service that he would cease to receive unemployment benefit as he had refused a suitable job offer from the Stelzer company and that he could appeal in writing to the regional office of the Public Employment Service.

2.7 On 14 October 1996, the author appealed the decision of the Public Employment Service, reiterating his claim regarding his previous salary. He added that, according to the information given to him by the Chamber of Labour on 12 August 1996, the salary and commission proposed by J.S. were less than the minimum established by the collective agreement and that, therefore, he was under no obligation to accept the job offer.

2.8 On 23 October 1996, an employee of the Public Employment Service contacted the head of the Stelzer company, who confirmed that the author had presented 40,000 Austrian shillings as a condition for accepting the offer of employment. J.S. added that the company would have been ready to pay the difference between the salary that was proposed and the minimum established by the collective agreement.

2.9 J.S. reiterated his previous statements in a letter dated 26 May 1997 to the Public Employment Service.

2.10 In a letter dated 8 August 1997 addressed to the author, the Public Employment Service confirmed its decision to withdraw his unemployment benefit from 16 September to 27 October 1996, as he had refused a suitable job offer by demanding an excessive salary.

2.11 On 19 September 1997, the author filed a complaint with the Administrative Court, arguing that the Public Employment Service had taken its decision based on incorrect information. He also requested a hearing before the Court.

2.12 On 3 July 2002, his complaint was rejected by the Court as unfounded. The Court noted that it was not required to assess whether the evidence given by the Public Employment Service was correct and accurate, as the considerations contained therein were

[1] There is no precise information about this collective agreement.

"conclusive", in accordance with article 45 (2) of the General Administrative Procedures Act. The Court also refused to hold a hearing, saying that it would not serve to clarify the facts of the case.

2.13 The author filed a complaint against the decision of the Court with the European Court of Human Rights.[2] On 2 May 2003, the First Chamber of the Court declared his complaint inadmissible since not all domestic remedies had been exhausted.[3] Thus, the author considers that his complaint has been rejected on procedural grounds and its merits have not been examined by another procedure of international investigation or settlement.

The complaint

3.1 The author submits that, by refusing to hold a public oral hearing as it considered it would not serve to clarify the situation, the Administrative Court deprived him of his procedural rights, as he was not able to defend himself and could not question the witnesses ready to testify against him.

3.2 The author claims that Austria has violated his right to access a tribunal, as laid down by article 14 (1) of the Covenant. He thus considers that the Court based its decision on evidence provided by the Public Employment Service, which is an administrative and not a judicial authority, without considering whether the information was correct. Therefore, by denying a substantive review and assessment of the evidence, the Court prevented him from having access to an independent tribunal that would review factual evidence.

3.3 The author further claims that, by ignoring his arguments, the Court deprived him of a fair trial.

3.4 The author considers that submitting his case to the Austrian Constitutional Court would be ineffective, as it is not able to assess evidence and to examine whether the decisions of other courts are correct, and that he has therefore exhausted all available and effective domestic remedies.

State party's observations on admissibility

4.1 In its observations dated 18 October 2011, the State party submits that the Wiener Neustadt Office of the Austrian Public Employment Service, through its decision of 1 October 1996, withdrew the author's entitlement to unemployment benefit from 16 September to 27 October 1996, in accordance with article 2 (10) of the Unemployment Insurance Act, because the author had declined an offer of employment from the Public Employment Service. The last-instance decision at the domestic level was issued by the Administrative Court, which dismissed the author's appeal on 3 July 2002. In May 2003, the European Court of Human Rights declared the author's application inadmissible on the ground that not all the domestic remedies had been exhausted.

4.2 Referring to rule 96 (c) of the rules of procedure of the Committee, the State party claims that the author's communication may constitute an abuse of the right of submission. In its view, this rule may be of relevance in the case of the author, even if it is to be applied only to communications received after 1 January 2012. The State party recalls that the Administrative Court's ruling (last-instance decision) was issued on 3 July 2002. On 2 May 2003, the author's application was declared inadmissible by the European Court of Human Rights. Accordingly, the time limit laid down in rule 96 (c) of the rules of procedure (five years from the exhaustion of domestic remedies or, where applicable, three years from the conclusion of another procedure of international investigation or settlement) has been considerably exceeded. Even if it is assumed that the author submitted his communication to the Committee in 2005, he failed to provide any reasons for its late submission. The State party submits that it is in the interests of legal certainty that the alleged violations of the Covenant are examined within a reasonable period of time and as early as possible, and that national decisions are not indefinitely subject to examination on the basis of the rights

[2] The date of the author's application to the European Court is not indicated.

[3] The Court determined that the domestic remedies, for purposes of art. 35, para. 1, of the European Convention, have not been exhausted, as the author failed to invoke the allegations submitted to the European Court in an appeal before the competent Austrian courts, and failed to raise his claims in accordance with the applicable requirements of the national procedural laws.

guaranteed under the Covenant. Otherwise, such an examination would sometimes be impossible simply because of the lapse of time, for example in cases in which — as a matter of routine — the relevant files are destroyed.

4.3 The State party has, moreover, challenged the admissibility of the communication on the ground that the same matter has already been examined by the European Court of Human Rights, with respect to the author's claim under article 14 (1) of the Covenant, referring to the Committee's rules of procedure (rule 96 (e)). The State party submits that the author failed to exhaust all available domestic remedies, recalling that the author's application lodged with the European Court was declared inadmissible, because he had only partially exhausted the legal remedies available at the national level. It submits that the author would have been free to file a complaint with the Constitutional Court, on account of an alleged violation of his right of access to a tribunal, requesting the Court to set aside the decision of the Administrative Court. He could also have requested an oral hearing before the Constitutional Court. The State party thus considers the author's communication inadmissible.

Author's comments on the State party's observations on admissibility

5.1 On 2 November 2011, the author refuted the State party's argument that his communication constituted an abuse of the right of submission. He recalls that the decision of the Administrative Court was issued on 3 July 2002, and his application was declared inadmissible by the European Court on 2 May 2003. He submitted the communication to the Committee on 14 February 2005, thereby complying with the time limits set out in rule 96 (c) of its rules of procedure.

5.2 As regards the exhaustion of domestic remedies, the author submits that an application to the Constitutional Court against the decision of the Public Employment Service would not be effective and that it would have no reasonable prospect of success. The Court examines only the constitutionality of a decision, not the reliability of the evidence. According to the Court's case law,[4] an administrative official is not required to give reasons for his decision concerning the conclusiveness and credibility of one's testimony. The author reiterates that his communication concerns proceedings before the Administrative Court, and claims that there are no domestic remedies against its refusal to conduct a hearing and to examine whether the Employment Service's decision was correct and accurate. Accordingly, he claims to have exhausted all available domestic remedies.

State party's observations on the merits

6.1 On 20 February 2012, the State party submitted new observations addressing also the admissibility of the communication, reiterating that it was registered only in 2011 under the reference number 2088/2011 and that, as concluded by the European Court of Human Rights in its decision of 2 May 2003 on admissibility, the author had failed to exhaust all available domestic remedies.

6.2 Referring to article 144 (1) of the Federal Constitutional Law, the State party claims that all the activities of an administrative authority affecting or determining an individual legal relationship are also subject to review by the Constitutional Court, particularly where an applicant alleges an infringement of a constitutional right.

6.3 The State party submits that the Constitutional Court holds oral hearings and that the author could have requested an oral hearing in his complaint to the Court. In its view, the author would have been free to challenge the alleged violations, at least in substance, before the Constitutional Court, as also required by article 2 of the Optional Protocol.

6.4 The State party contends that the author's allegation — namely, that the Administrative Court was not an independent tribunal — could have been asserted before the Constitutional Court. It submits that the State party's legal system provides opportunities to appeal, in accordance with article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), as well as the right of access to an independent and impartial tribunal, to a public oral hearing and to a fair trial, in accordance with article 14 of the Covenant. The State party claims that the author could also have asserted that the challenged decision had been issued arbitrarily.

[4] The author refers to Constitutional Court decision VfSlg 11.965/1989.

In this connection, he could have invoked the constitutionally guaranteed right to equality of all citizens before the law, referring for example to a repeatedly incorrect assessment of the legal situation, to the failure to conduct an investigation on a decisive point, to the failure to conduct a proper investigation at all or to a disregard of certain submissions by the parties.[5] The State party considers that an authority acts arbitrarily, in particular, if it justifies one of its decisions on the basis of arguments that do not have explanatory value.[6] The relevant considerations underlying the decision must emanate from the reasoning of the decision, since it is the only way to enable the Constitutional Court's review, which is indispensable in a State based on the rule of law.[7] Since the author has failed to appeal to the Constitutional Court, the present communication should be considered inadmissible. However, if the Committee considers the communication admissible, it should declare it without merit.

6.5 As concerns the alleged violation resulting from a failure to hold a hearing before the Administrative Court, the State party contends that it guarantees a public oral hearing to parties making claims under the Unemployment Insurance Act, which falls within the scope of civil claims and obligations under article 14 of the Covenant. However, in accordance with the Committee's jurisprudence, the requirement of a public hearing does not apply without restriction to all appellate proceedings, for example, if the proceedings can be determined on the basis of written submissions.[8] As regards the claim that the Administrative Court was wrong to assume that further clarification of the matter could not be expected from an oral hearing, the State party recalls that the author submitted to the Court that the Public Employment Service had not established the facts correctly and had relied on an erroneous weighing of evidence in its findings.

6.6 The State party notes the argument of the author that the reasons given by the Public Employment Service as to why it had attributed greater credibility to the statements of a particular witness (the author's potential employer — J.S.) than to his statements were not objectively justified, and that in the absence of a formal hearing, he had had no opportunity to ask the witness, J.S., questions about the content of the job interview. However, the State party considers that the only issue at dispute was the question of whether the author — as noted by the Public Employment Service — had actually demanded a salary of 40,000 Austrian schillings during the interview. It is clear from the documents examined by the Administrative Court that the witness expressly stated on two occasions, both in the first-instance proceedings and in his submission forwarded in the course of the appellate proceedings, that the author had demanded such a salary as a condition for accepting the job. These statements seemed credible to the Public Employment Service because the witness' company had informed the Weiner Neustadt Office that they urgently needed someone and would have employed the author subject to their conditions had he agreed. Since the author had already earned a salary of over 40,000 Austrian schillings, it did not seem unreasonable to the Public Employment Service that he again wanted to earn such a salary.

6.7 As part of its role to review written submissions, the Administrative Court could not consider the weight of such evidence inconclusive. Therefore, further clarification of the matter was not to be expected from an oral hearing. Furthermore, the State party notes the author's complaint that he could not have been expected to accept the job offered to him, since the company merely stated that it would pay a fixed gross amount of 10,000 Austrian schillings, together with commission. The State party indicates that the company's statement before the first-instance authority that it would pay the difference up to the salary guaranteed under the collective agreement showed its readiness to find a solution to the disputed remuneration. This option was not mentioned to the author during the job interview.

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[5] Reference is made to the constant case law in that regard by the Constitutional Court (e.g. decisions VfSlg 15.451/1999, 15.743/2000, 16.354/2001 and 16.383/2001).

[6] See e.g. Constitutional Court decisions VfSlg 13.302/1992, 14.421/1996 and 15.743/2000.

[7] See e.g. Constitutional Court decisions VfSlg 17.901/2006 and 18.000/2006.

[8] The State party refers to communications No. 301/1988, *R.M. v. Finland*, decision of inadmissibility adopted on 23 March 1989, para. 6.4; No. 215/1986, *Van Meurs v. the Netherlands*, Views adopted on 13 July 1990, para. 7.1; and No. 789/1997, *Bryhn v. Norway*, Views adopted on 29 October 1999, para. 7.2. See also general comment No. 32 (2007) on article 14: right to equality before courts and tribunals and to a fair trial, para. 28.

6.8 As regards the company's statement on remuneration, the Administrative Court stated in its ruling that the author could have raised any (subjective) doubts he might have had about remuneration during the job interview. Even if a salary offer were (objectively) questionable under the collective agreement, it would be for the unemployed person (before refusing the job) to ask pertinent questions to get a clear picture of the situation. The salary offered to the author during the interview contained an unspecified commission in addition to a fixed amount. In the absence of further indications in that respect, the State party submits that the author was not in a situation to conclude that the potential employer did not even want to pay him the minimum salary under the collective agreement, in case of lower earnings from commission.

6.9 As was evident from the complaint and the files submitted to the Administrative Court and the assessment by the intervening administrative authorities that further clarification of the matter could not be expected from an oral hearing, the Court could decide against holding such an oral hearing in the light of conducting its proceedings efficiently, in accordance with article 39 (2) (6) of the Administrative Court Act, without violating the author's rights guaranteed by article 14 (1) of the Covenant.

6.10 As regards the alleged refusal to examine the correctness of the facts and evidence relevant to the decision of the Administrative Court, and the alleged failure to consider the individual complaints, the State party submits that the Committee is not a court of "fourth instance". It recalls that the establishment of the facts, weighing of evidence and interpretation of national legislation is a matter for the States parties, unless there is an apparent arbitrariness, error or denial of justice.[9]

6.11 Furthermore, the State party submits that according to section 41 (1) of the Administrative Court Act, the Administrative Court's role of reviewing is restricted in respect of the facts, as the Court should carry out its examination "on the basis of the facts found by the challenged authority". In the case of a procedural irregularity, the Court merely sets aside the challenged decision; it cannot take a decision on the merits. Hence, the Court cannot conduct proceedings to take further evidence.

6.12 The State party also contends that the weighing of evidence by the challenged authority is subject to review by the Administrative Court. It has to determine whether the facts have been sufficiently established, and whether the evidence was reasonably assessed — i.e. whether such an assessment complied with the principle of reasonableness.

6.13 In the author's case, the Administrative Court examined in detail the weighing of evidence by the challenged authority and the author's arguments against it, point by point. The State party indicates that the considerations underlying the reasoning of its ruling comprise eight pages in that respect.[10] The Court held in that ruling that the challenged authority comprehensively considered the contradictory statements of the author and the witness J.S., in accordance with the case law mentioned above (para. 6.4), weighing all the evidence. By no means can it be said that the Court did not consider the author's submissions. Despite the limited scope of review by the Court as described above, it and its procedures comply with the institutional guarantees of article 14 of the Covenant and it represents a competent, independent, impartial tribunal established by law within the meaning of that article.

6.14 The State party requests the Committee to declare the communication inadmissible under article 3 of the Optional Protocol. If it considers the communication to be admissible, it should conclude that there has been no violation of the author's rights under article 14 of the Covenant.

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[9] The State party refers to communications No. 1188/2003, *Riedl-Riedenstein et al. v. Germany*, decision adopted on 2 November 2004, para. 7.3; No. 886/1999, *Schedko v. Belarus*, Views adopted on 3 April 2003, para. 9.3; No. 1138/2002, *Arenz, Röder and Röder v. Germany*, decision of inadmissibility adopted on 24 March 2004, para. 8.6; and No. 1454/2006, *Lederbauer v. Austria*, Views adopted on 13 July 2007, para. 7.4, wherein the Committee recalled that it is generally for the courts of States parties to the Covenant to review the facts and evidence, or the application of domestic legislation, in a particular case, unless it can be shown that such evaluation or application was clearly arbitrary or amounted to a manifest error or denial of justice.

[10] The ruling of 3 July 2002, No. 97/08/0536, p. 8 ff., was annexed to the initial communication.

Author's comments on the State party's additional observations

7.1 On 27 March 2012, the author submitted his comments on the State party's observations, alleging that he had exhausted the domestic remedies available to him. He claims that an appeal to the Constitutional Court would be ineffective as it would have no reasonable prospect of success. He submits that an appeal to the Constitutional Court against the proceedings and decisions of the Administrative Court is not even possible in Austria, notwithstanding article 144 of the Federal Constitutional Law.[11]

7.2 The author argues that the Administrative Court should have guaranteed his right to a fair trial by conducting a hearing and deciding on the facts of his case. By not doing so, the Court has violated article 14 of the Covenant. He also claims that the Covenant had no constitutional value in Austria before its incorporation into national law in 2012, in particular as regards the application of article 14 of the Covenant in the area of unemployment insurance. In this regard, the author refers to the concluding observations of the Committee on Austria dated 30 October 2007 (CCPR/C/AUT/CO/4, para. 6), which noted that the Covenant was not directly applicable in the State party, and that there was no corresponding domestic remedy in Austria.

7.3 The author claims that simple mistakes in proceedings, incorrect weighing of evidence and false findings of fact are not constitutional issues according to the case law of the Constitutional Court.[12]

7.4 The author adds that making a complaint to the Administrative Court was the appropriate remedy, although he claims that a public hearing was necessary, in accordance with article 39 (1) and (2) of the Administrative Court Act and international law. He reiterates that there is no domestic remedy against the decision of the Administrative Court to refuse to conduct a hearing and to examine the lawfulness and accuracy of the decision of the Public Employment Service, and to disregard important submissions by a party. The author refers to the judgment of the European Court of Human Rights in *Fischer v. Austria*, in which it reportedly concluded that the refusal by the Administrative Court to hold an oral hearing amounted to a violation of article 6 (1) of the European Convention on Human Rights.[13] Subsequent to that judgment, article 39 of the Administrative Court Act was modified, with effect from 1 September 1997, to ensure compliance with article 6 (1) of the Convention. Although the author submitted his complaint to the Administrative Court on 19 September 1997, the Court reportedly did not respect the new legal provision and cited, in its decision of 3 July 2002, the previous version of article 39 of the Administrative Court Act.[14]

7.5 The author further reiterates that the State party violated article 14 of the Covenant because the Administrative Court disregarded important facts and that it did not cite any exceptional circumstances that might have justified dispensing with an oral hearing. The author considers that such a hearing would have enabled him and his counsel to examine the witness, J.S., and the issue of salary.[15]

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[11] In article 144 (1), it is stated that: "The Constitutional Court pronounces on rulings by an Administrative Court insofar as the appellant alleges an infringement … of a constitutionally guaranteed right".

[12] See decision VfSlg 11.965/1989 of the Constitutional Court, in which it states that an evaluation of evidence by the authority is considered arbitrary if it contradicts everyday experience or the rules of logical thinking. Only in this case — according to the constant case law of the Constitutional Court — should it be considered, under constitutional law, as a gross infringement of procedural law. In addition, there exists no obligation for an administrative authority to give precise reasons for its decision concerning the conclusiveness and credibility of a witness' testimony. In another decision of the Constitutional Court (VfSlg 11.126), it stated that the complainant's accusations against an administrative authority's weighing of evidence … are considered a procedural matter, which does not come within the purview of the Constitutional Court.

[13] See *Fischer v. Austria*, 26 April 1995, Series A No. 312, para. 44.

[14] See the Administrative Court decision of 3 July 2002, pp. 12-13.

[15] The author submits that, further to his request of 12 August 1996, the Chamber of Labour informed him that, under the collective agreement, he would be entitled to a salary of 25,480 Austrian schillings a month. Therefore, it should not have been taken as a fact that a month later the complainant, in the course of the interview, suddenly demanded an unrealistic salary of 40,000 Austrian schillings a month.

7.6 The author concludes that the violation of article 14 of the Covenant derives, in part, from article 41 (1) of the Administrative Court Act, which restricts the role of the Administrative Courts to review the facts. He therefore considers that the claims under the Unemployment Insurance Act cannot be independently assessed.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

8.2 The State party has challenged the admissibility of the author's claims under article 14 on the ground that his communication represents an abuse of the right of submission, pursuant to article 3 of the Optional Protocol. The State party held that the author had submitted his communication in 2011, while the last available remedy had been exhausted on 3 July 2002, and his complaint to the European Court of Human Rights had been declared inadmissible owing to non-exhaustion of domestic remedies on 2 May 2003. As the communication to the Committee was submitted in German on 14 February 2005, and at the request of the Committee, dated 9 June 2011, it was submitted in English on 4 July 2011, the Committee considers that it is not precluded from considering the author's communication by article 3 of the Optional Protocol, as his communication was submitted less than two years after the decision of the European Court of Human Rights.

8.3 The Committee notes that the State party has, moreover, challenged the admissibility of the communication on the ground that the same matter has already been examined by the European Court of Human Rights, with respect to the author's claim under article 14 (1) of the Covenant.

8.4 The Committee observes that, when ratifying the Optional Protocol and recognizing the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction, the State party made the following reservation, with reference to article 5 (2) (a) of the Optional Protocol: "On the understanding that, further to the provisions of article 5 (2) of the Protocol, the Committee provided for in Article 28 of the Covenant shall not consider any communication from an individual unless it has been ascertained that the same matter has not been examined by the European Commission on Human Rights established by the European Convention for the Protection of Human Rights and Fundamental Freedoms."

8.5 The Committee recalls its jurisprudence in which it states that a decision on inadmissibility amounts to an "examination", for the purpose of article 5 (2) (a) of the Optional Protocol, when it entails at least the implicit consideration of the merits of a complaint.[16] However, the author's complaint was declared inadmissible by the European Court owing to non-exhaustion of domestic remedies. The Committee thus does not consider itself precluded from examining the author's claim under article 14 of the Covenant, pursuant to article 5 (2) (a) of the Optional Protocol.

8.6 As regards the requirement to exhaust all available domestic remedies, the Committee notes that the author has not availed himself of a constitutional complaint, as he considers that such a complaint against the decision of the Administrative Court in his case would be ineffective. The Committee also observes that according to the State party, the author could have filed a complaint with the Constitutional Court on account of an alleged violation of his right of access to a tribunal and to equality before the law. In the present case, the Committee observes that the author has not invoked the claims he submitted to the Committee before the competent Austrian courts, or substantiated his allegations regarding the ineffectiveness of a constitutional complaint in his case, with respect to his right of access to a tribunal and to a public hearing. In this connection, while the author disagrees with the assessment made by the State party as concerns the effectiveness of domestic remedies available against the decisions of Administrative Courts in Austria, he does not make any reference in his claim to previous jurisprudence or otherwise substantiate his

[16] See communication No. 1396/2005, *Rivera Fernández v. Spain*, decision adopted on 28 October 2005, para. 6.2.

allegation that such a remedy for a violation of the right of access to a tribunal would be ineffective in his case. The Committee therefore concludes that his communication is inadmissible under article 5 (2) (b) of the Optional Protocol.

9. The Committee therefore decides:

(a) That the communication is inadmissible under article 5 (2) (b) of the Optional Protocol;

(b) That the decision be transmitted to the State party and to the author.